

Hearing Date: June 28, 2019 at 10:00 a.m. (AST)
Objection Deadline: June 21, 2019 at 4:00 p.m. (AST)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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<i>In re</i>	:	
	:	PROMESA
THE FINANCIAL OVERSIGHT AND	:	Title III
MANAGEMENT BOARD FOR PUERTO RICO,	:	
	:	
as representative of	:	Case No. 17-BK-3283 (LTS)
	:	
THE COMMONWEALTH OF PUERTO RICO,	:	(Jointly Administered)
<i>et al.</i> ,	:	
	:	
Debtors. ¹	:	
-----X	:	
<i>In re</i>	:	
	:	
THE FINANCIAL OVERSIGHT AND	:	PROMESA
MANAGEMENT BOARD FOR PUERTO RICO,	:	Title III
	:	
as representative of	:	
	:	Case No. 17-BK-04780-LTS
PUERTO RICO ELECTRICAL POWER	:	
AUTHORITY (PREPA),	:	Court Filing Relates Only to PREPA
	:	
Debtor.	:	
-----X	:	

**STATEMENT OF FUEL LINE LENDERS IN SUPPORT OF URGENT MOTION OF
OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ORDER,
PURSUANT TO BANKRUPTCY CODE SECTION 926(a), AUTHORIZING
COMMITTEE TO PURSUE CERTAIN AVOIDANCE ACTIONS ON
BEHALF OF PUERTO RICO ELECTRIC POWER AUTHORITY**

¹ The Debtors in these title III cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747).

To the Honorable United States District Judge Laura Taylor Swain:

Cortland Capital Market Services LLC (“Cortland”), as administrative agent² for lenders under that certain Credit Agreement, dated as of May 4, 2012, among PREPA, Scotiabank, and the lenders party thereto (as amended, the “Scotiabank Credit Agreement”), and SOLA LTD, Solus Opportunities Fund 5 LP, Ultra Master LTD, and Ultra NB LLC (collectively, “Solus”), as lenders to PREPA under a certain Trade Finance Facility Agreement, dated as of July 20, 2012, among PREPA and Citibank, N.A., as predecessor to the existing lenders thereunder (as amended, the “Citibank Credit Agreement” and, together with the Scotiabank Credit Agreement, the “Fuel Line Facilities” and the lenders thereunder, the “Fuel Line Lenders”) respectfully submit this statement in support of the *Urgent Motion of Official Committee of Unsecured Creditors for Order, Pursuant to Bankruptcy Code Section 926(a), Authorizing Committee to Pursue Certain Avoidance Actions on Behalf of Puerto Rico Electric Power Authority* [Case No. 17-BK-4780-LTS, Dkt. No. 1354] (the “Motion”).³

STATEMENT

1. On May 4, 2012, PREPA entered into the Scotiabank Credit Agreement, under which the banks agreed to advance up to \$500,000,000 to PREPA to finance PREPA’s purchase of essential fuel supplies. The amount of the available line was subsequently increased to \$550,000,000, nearly all of which is outstanding.

² Effective May 17, 2019, Cortland replaced Scotiabank de Puerto Rico (“Scotiabank”) as administrative agent for lenders under the Scotiabank Credit Agreement.

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2. On July 20, 2012, PREPA entered into the Citibank Credit Agreement under which the lenders agreed to advance up to \$250,000,000, of which approximately \$146,000,000 in principal is currently outstanding.

3. The payments on the Fuel Line Facilities are “Current Expenses” under the Trust Agreement governing PREPA’s bond debt. The Trust Agreement provides that Current Expenses are required to be paid first, before the bondholders’ lien can attach to PREPA’s revenues. The bondholders’ lien, accordingly, is a lien on *net* revenues (*i.e.*, revenues after payment of Current Expenses) as opposed to *gross* revenues.⁴

4. Given the plain language of the Trust Agreement, under which the bondholders have no lien unless and until Current Expenses — including the Fuel Lines — are paid in full, a cause of action challenging perfection under section 544(a) is not necessary to establish the limited nature of the applicable lien. Nonetheless, to the extent the bondholders seek to assert a lien on gross revenues, their failure to perfect that lien (through control over the relevant accounts) provides an independent basis to reject the bondholders’ position. Any such purported lien is subject to avoidance under section 544(a) of the Bankruptcy Code.

5. The statute of limitations to bring an action under section 544(a) expires in less than two weeks. Because of the risk that the Supreme Court could hold invalid the actions of the Oversight Board,⁵ the Committee has sought to be appointed as a trustee, pursuant to section 926(a) of the Bankruptcy Code, to allow it to bring estate causes of action if necessary. There is

⁴ Further discussion on the Fuel Line Facilities, their entitlement to priority, and the limited, contingent nature of the bondholders’ lien is contained in the *Motion of Scotiabank de Puerto Rico, as Administrative Agent, and Funds Advised by Solus Alternative Asset Management LP for Leave to Intervene* and the exhibits thereto [Adv. Pro. No. 17-00232, Dkt. No. 24].

⁵ The Supreme Court announced yesterday that it has granted certiorari to review the decision of the First Circuit on both the Appointments Clause and the *de facto* officer doctrine issues. *See Fin. Oversight & Mgmt. Bd. v. Aurelius Inv., LLC*, 2019 WL 1790539 (U.S. June 20, 2019).

simply no reason why the pursuit of such causes of actions should be put at risk, and the Fuel Line Lenders therefore support the Committee's request.

6. The Fuel Line Lenders understand that, through the combination of the Oversight Board's tolling agreements and the relief being sought by the Committee, the PREPA *estate* will preserve all causes of action in advance of the expiration of the statute of limitations. Given that those estate causes of action are being preserved, all other creditors of PREPA (including the Fuel Line Lenders) will likewise reserve their rights to seek derivative standing in the future under section 926(a). So long as the estate causes of action have been timely brought or the limitations period has been consensually tolled, there is no limitation on this Court's authority to appoint a trustee to pursue the claims if the requirements for derivative standing are later met.

7. The Fuel Line Lenders therefore join in the Committee's Motion to the extent the Committee requests that it be appointed to serve as trustee under section 926(a) of the Bankruptcy Code to pursue estate causes of action against the Bond Trustee and the bondholders.

Dated: June 21, 2019

Respectfully submitted,

/s/ Nayuan Zouairabani

Nayuan Zouairabani
USDC-PR No. 226411
MCCONNELL VALDÉS LLC
270 Muñoz Rivera Avenue, Suite 7
Hato Rey, Puerto Rico 00918
P.O. Box 364225
San Juan, Puerto Rico 00936-4225
Telephone: (787) 250-5604
Facsimile: (787) 759-9225
Email: nzt@mcvpr.com

/s/ Emil A. Kleinhaus

Richard G. Mason (admitted *pro hac vice*)
Amy R. Wolf (admitted *pro hac vice*)
Emil A. Kleinhaus (admitted *pro hac vice*)
Angela K. Herring (admitted *pro hac vice*)
Joseph C. Celentino (admitted *pro hac vice*)
WACHTELL, LIPTON, ROSEN & KATZ
51 West 52nd Street
New York, New York 10019
Telephone: (212) 403-1000
Facsimile: (212) 403-2000
Email: rgmason@wlrk.com
arwolf@wlrk.com
eakleinhaus@wlrk.com
akherring@wlrk.com
jccelentino@wlrk.com

*Attorneys for Cortland Capital Market
Services LLC, as Administrative Agent*

/s/ Jose L. Ramirez-Coll

Jose L. Ramirez-Coll
USDC-PR No. 221702
ANTONETTI, MONTALVO
& RAMIREZ-COLL
P.O. Box 13128
San Juan, Puerto Rico 00908
Telephone: (787) 977-0303
Facsimile: (787) 977-0323
Email: jramirez@amrclaw.com

/s/ Bryce L. Friedman

Sandy Qusba (admitted *pro hac vice*)
Bryce L. Friedman (admitted *pro hac vice*)
Nicholas Baker (admitted *pro hac vice*)
SIMPSON THACHER & BARTLETT LLP
425 Lexington Avenue
New York, New York 10017
Telephone: (212) 455-2000
Facsimile: (212) 455-2502
Email: squsba@stblaw.com
bfriedman@stblaw.com
nbaker@stblaw.com

*Attorneys for SOLA LTD, Solus Opportunities
Fund 5 LP, Ultra Master LTD, and Ultra NB
LLC*